IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 199 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REGIONAL DIRECTOR - Petitioner(s)

Versus

SIDDIQUE BEG AHMED BEG MIRZA - Respondent(s)

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Appearance :

MR MITUL K SHELAT for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner -State Road Transport Corporation has challenged the legality of the award dated 31st January, 2000 passed by Labour Court,

Godhra. By the impugned award the Labour Court was pleased to set aside the punishment of dismissal imposed on the respondent and was pleased to substitute the same by imposing penalty of withholding of four increments permanently.

2. The respondent was engaged as a conductor by the petitioner corporation. On 18/12/1996 when the respondent was discharging his duties as a conductor in a bus going from Ahmedabad to Bhopal, the checking squad which inspected the bus at Somkutch found that 20 passengers were not issued tickets though fare was collected from them. For this misconduct a charge sheet came to be issued against the respondent. The employer upon conclusion of the inquiry by order dated 1st July, 1997 issued dismissal of the respondent from service. The respondent challenged his penalty before the Labour Court by raising a dispute.

3. Before the Labour Court and also before the disciplinary authority it was a case of the respondent workman that he had not committed misconduct and that the tickets were not issued to the passengers on account of his involvement in helping the driver. It was the case

of the respondent that on the date of the event there was a meeting of the then Prime Minister at Indore which had caused the bus running late by several hours. It was the case of the respondent that it was a express bus and the passengers were not going to get down before Bhopal and, therefore, there was no urgency in issuing the tickets. In short though the factum of non issuance of tickets were virtually admitted the workman contended that he had no ill intention in not issuing the tickets.

4. Before the Labour Court the respondent admitted the legality of the departmental inquiry conducted by the petitioner. He however, questioned the conclusion reached during the departmental inquiry.

5. The Labour Court in its impugned award came to the conclusion that when the bus was checked latest of the passengers who boarded had boarded the bus from Dewas which was at about 75 kms. from the point of checking. The Labour Court observed that this assertion of the reporter has not been challenged by the respondent. The Labour Court, therefore, concluded that the respondent was responsible for not issuing tickets for a long time. The Labour Court however, observed that in not issuing

the tickets the respondent had no intention to misappropriate the fare. The Labour Court observed that the petitioner did not examine the passengers during the course of the inquiry and, therefore, the charge of misappropriation or malafide intention on the part of the respondent was not proved.

6. In my view the conclusions of the Labour Court are not sustainable. The respondent had collected fare from several passengers but had not issued tickets for more than 75 kms. of distance. The defence put forth by the respondent that he was busy helping the driver which prevented him from issuing tickets cannot be accepted. There was no material put forth by the respondent to establish this fact. In any case, the distance between the boarding of the passengers and the checking of the bus was too much to be ignored lightly. In the conclusion, therefore, after having collected the fare, the respondent did not issue the tickets for a long time. The conclusion arrived at in the departmental inquiry, therefore, could not have been over-ruled by the Labour Court when there was sufficient material on record. When the Labour Court concluded that the respondent was guilty of not issuing tickets for a long distance, there was no

further scope for the Labour Court to conclude that the charge of misappropriation of the fare was not proved, since it has been brought on record that the respondent had in fact collected the fare from the concerned passengers. The Labour Court also erred in concluding that the charge fails since the passengers were not examined. In the decision of **Delhi Transport Corporation vs. Shyam Lal reported in 2004 AIR SCW 4711,** the Hon'ble Supreme Court observed that when the reporter has been examined who recorded the statement of the passengers, the evidence cannot be categorized as hearsay evidence. This view was reiterated in the later decision of **Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane reported in 2004 AIR SCW 5427**.

7. In the decision of **Karnataka State Road Transport Corporation vs. B.S.Hallikatti reported in AIR 2001 SC page 930** it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was further observed that bus conductors act

in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or correct amount of fare.

8. In the decision of **Regional Manager, UPSRTC, Etawah and Ors. vs. Hoti Lal and Anr. Reported in AIR 2003 SC 1462,** it was observed that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. It was further observed that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Where the persons dealing with the public money or is engaged with the financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.

9. In the decision of C**hairman and Managing Director, United Commercial Bank and Ors. vs. P.C.Kakkar reported in AIR 2003 SC 1571,** it was once again reiterated that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to

such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law.

10. From the above discussion, it can be seen that the charge of having misappropriated the fare collected was proved against the respondent. The Labour Court erred in setting aside the order of dismissal and ordering substitution of lesser punishment. In the result the award of the Labour Court cannot be sustained, the same is set aside. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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